Getting nudges right – interests, norms and the legitimacy of choice architecture

Robert Neumann 2015-01-08T11:59:05

While the general approach of choice architecture of altering the decision contexts of individuals without limiting freedom of choice should provide several innovative and efficient regulatory tools, the criticism by various scholars usually focuses on the following: Critics claim that the influence of the regulatory state in dictating socially desirable goals to be achieved through nudges by steering consumers towards these goals will go well beyond any libertarian idea regarding the role of state and its supposed impact on citizens' autonomy. When theorizing about the question of legitimacy of nudging policies, reflecting the normative foundations of choice architecture will foster the discussion between proponents of opponents of behavioral regulations envisioned in “Nudge”. So far, the idea of choice architecture has its origins in the empirical evidence on the anomalies of classic economic or narrow (as described by Karl-Dieter Opp (Opp 1999)) rational choice theory, where this narrow version is derived from the assumptions about the representative agent described by the homo oeconomicus and the calculus of decision is tied to expected utility theory. What often is overlooked is that the normative prerequisite for comparing different states of welfare is the so called revealed preference axiom: Observed choice reflects optimal behavior as if the decision was made by maximizing potential outcomes given a set of preference, given (full) information and exogenous constraints. Obviously, Thaler & Sunstein are critical about this prerequisite, stating that the axiom of revealed preferences is wrong most of time: “In our understanding, a policy counts as paternalistic if it is selected with the goal of influencing the choices of affected parties in a way that will make those parties better off. We intend better off to be measured as objectively as possible, and we clearly do not always equate revealed preferences with welfare. (Thaler & Sunstein 2008: 8) That is why they also refrain from applying traditional tools of welfare analysis to derive proposition about which default rule to be set, which social nudge to be introduced or which re-framing approaches shall be implemented or changed. The justification for applying choice architecture remains more or less anecdotal rather than analytic: “In other words, we argue for self-conscious efforts, by private and public institutions, to steer people's choices in directions that will improve the choosers' own welfare. In our understanding, a policy therefore counts as "paternalistic" if it attempts to influence the choices of affected parties in a way that will make choosers better off.” There remains some confusion then on which normative grounds a (desired) default rule is set by the government, as the present formulation falls back to the principles behind the revealed preferences axiom. This naturally raises the question on which grounds a rule is set if there are, for instance, several different ways of setting a default? So far, Libertarian Paternalism lacks a clear and sufficient justification to choose among different paths of altering choices.

A second point follows up on these ideas. Given the assumption that normative justification for nudging policies is still tied to normative principles of welfare economics and the axiom of revealed preferences, the initial goals of the behavioral approach to regulation – to investigate the assumptions of narrow rational choice theory and derive new regulatory tools based on the evidence – remain incomplete. Given the traditional ignorance within traditional economics towards the content of preferences and the causes for specific paths of decision making by individuals, the innovative feature of Libertarian Paternalism is the recognition of the empirical evidence within the Heuristics and Biases Program and the approaches of Dual Processing Models of Social Psychology. While both these research programs are well suited to account for the anomalies of the narrow rational choice theory, there still remain several open debates about why to integrate the evidence into a regulatory framework at all. For instance, Nathan Berg and Gerd Gigerenzer have claimed the following: “[A]lmost no empirical evidence exists documenting that individuals who deviate from economic axioms of internal consistency (e.g., transitive preferences, expected utility axioms, and Bayesian beliefs) actually suffer any economic losses. No studies we are aware of show that deviators […] earn less money, live shorter lives, or are less happy.” Adding to this perspective, a complete account for the empirical evidence on the anomalies of narrow rational choice theory would reflect on the origins of this behavior that is shaped by default rules or influenced by status quo biases. Concurrent theoretical explanations, from the fields of Sociology, Organization Studies or Institutional Economics emphasize the importance of mental models, socially shared expectations about the desirability of certain goals or the shared expectation about how certain goals need to be achieved. The case can be made that default rules and their impact reflect the incentives set by formal and informal institution, the rules of the game that govern social and economic interactions that have evolved over decades or even centuries. Thus altering default rules simultaneously change parts of the what Douglass North (1994) has described as the “institutional matrix“ of a society. Of course, while there are good arguments to alter established rules because we know institutions are characterized for being sticky – as they may create lock-in effects that increase the likelihood of inefficiencies – avoiding these forms of institutional inertia requires indebt understanding in what areas default rules exhibit their influence in guiding choices by reflecting socially shared expectations or social norms that are followed unconditionally. As Amir and Lobel (2008:2121-2122) have put it “The frame in which information is presented both responds to and constructs social norms. Preferences are endogenously shaped by the framing and setting of defaults. […] The idea that the formation of norms and values is a task for government is antithetical to libertarian principles, which view constraints on and intervention into individual action and way of life as a violation of liberty.” Given the insights from the area of institutional economics, most informal or formal rules have survived or have been institutionalized because they are instrumentally beneficial for individuals and collective societies. But especially in areas where economic thus teleological concepts of legitimacy runs counter to, for instance, ideological, religious or moral features embedded in an institutional framework, the legitimacy of nudging policies will be rather fragile. The long term problems of changing formal institutions without any or sufficient knowledge and respect to established informal rules and ideas was and still is observable with regards to the former communist countries, and there is ample empirical evidence on these sort of path dependencies undermining rational concepts of legitimacy.

Last, when thinking about the legitimacy of Nudging policies, a complete account of human decision making requires us to gain an understanding of both the preferences for goals and the preferences over ways of achieving those goals. If one has the tools to distinguish these two underlying reasons why individuals behave and decide the way they do in certain situations, this information can be used to increase the likelihood that choice architecture will be perceived as a legitimate regulatory approach. The step would then reflect a policy Viktor Vanberg has coined preference based economic policy (see Neumann 2013). This shall not be misunderstood that the government should only introduce rules preferred by citizens, but it puts the emphasis on the principle to gather and use information about preferences over outcomes and preferences over actions to think about the different ways incentives can be set and choice contexts can be altered.

References:

AMIR, ON & ORLY LOBEL (2008). Stumble, Predict, Nudge: How Behavioral Economics Informs Law and Policy. Columbia Law Review 108(8), 2098–2137.

BERG, NATHAN & GERD GIGERENZER (2010). As-if Behavioral Economics: Neoclassical Economics in Disguise? History of Economic Ideas 18(1), 133–165.

NEUMANN, ROBERT (2013). Libertärer Paternalismus – Theorie und Empirie staatlicher Entscheidungsarchitektur. UOrd 66. Tübingen: Mohr Siebeck.

NORTH, DOUGLASS C. Economic Performance Through Time. American Economic Review 84(3), 359–368.

OPP, KARL-DIETER (1999). Contending conceptions of the theory of rational action. Journal of Theoretical Politics 11(2), 171–202.

THALER, RICHARD H. & CASS R. SUNSTEIN (2008). Nudge: Improving Decisions about Health, Wealth and Happiness. New Haven & London: Yale University Press.